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EXAMINER
PATEL, JAYESH A

ART UNIT	PAPER NUMBER
2624	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/684,023	BRAVOMALO ET AL.
	Examiner	Art Unit	
	JAYESH A. PATEL	2624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS,
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>28 January 2009</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
   closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-76</u> is/are pending in the application.

    4a) Of the above claim(s) <u>1-50</u> is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>51-53,55,57-59 and 67-76</u> is/are rejected.

7)☐ Claim(s) <u>54,56 and 60-66</u> is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>10 October 2003</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

    1.☐ Certified copies of the priority documents have been received.

    2.☐ Certified copies of the priority documents have been received in Application No. _____.

    3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
       application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
   Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

U.S. Patent and Trademark Office

PTOL-326 (Rev. 08-06)   **Office Action Summary**   Part of Paper No./Mail Date 20090504

Response to Arguments

Applicant's arguments filed 01/28/2009 have been fully considered but they are
not persuasive.

Regarding 35 U.S.C 101 rejections of claims 51-73 on remarks page 9,
even though the instant claims involve processing the images representative of
the person which involves a real world representation of an object, the claims
however do not satisfy the "transformation test" under the Federal Circuit. *See
Gottschalk v. Benson,* 409 U.S. 63, 67 (1972); *In re Bilski,* 545 F.3d 943,956
(Fed. Cir. 2008). The claims do not show the depiction of the results and
therefore they are rejected. Under the transformation test the last step in the
analysis is the **depiction (display)** of the results. Nowhere in the claims there is
a recital of the depiction of the transformed images. The examiner recommends
amending the claims to show the depiction of the results of the transformation.
The amendments must be in support with the original disclosure in order to avoid
the new matter issues.

Applicant further argues on page 9 that "Crampton reference does not
disclose predicting a person's appearance resulting from following a prescribed
regimen", the examiner disagrees. Crampton at **Col 52 lines 14-18** clearly
recites that the direct user input weight data would enable avatar data to be
generated which allowed individuals to simulate the effects of the weight change
as a result of dieting". The avatar generated based on the simulation effects due
to the dieting meets the limitations of predicting a person's appearance resulting

from prescribed regimen (dieting). Applicant further argues on page 9 that "The relationship between body mass in a pre-regimen and post-regimen condition is not considered by Crampton", the examiner disagrees. The above limitations are not claimed. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e. The relationship between body mass in a pre-regimen and post-regimen condition is not considered by Crampton) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant further argues on page 9 that Crampton does not disclose **"a body shape designation"**, the examiner disagrees. The applicant points to the support in the specification " As described in Applicant's specification, a body shape designation is an indication representative of where fat should be placed on the model of a person's body. *See* Specification at p. 17, 1.4-10.". In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies **(i.e. a body shape designation is an indication representative of where fat should be placed on the model of a person's body) are not recited in the rejected claim(s)**. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Claim terms

or limitations are given the broadest interpretation and meaning. Nowhere in the claim it recites a body shape designation is an indication representative of where fat should be placed on the model of a person's body. Crampton discloses said first data set comprising a body shape designation at **(obtaining data representative of a user's external appearance (body shape designation) at Col 55 lines 6-21 and 46-47, lines 16-18 and Col 51 lines 63 through Col 52 lines 18 where the outline data is utilized to define the maximum extent of the individual).** The various initial body shapes are used for generating avatars representing specific indivduals and the selection of which generic avatar is used as a model could alternatively be selected by the user in **Col 55 lines 6-21** meets the limitations of body shape designation where a particular body shapes are designated or selected.

Applicant further argues on page 9 that "The body outline data of Crampton referenced by the Examiner is simply that--an outline--and does not correlate to a distribution of fat", the examiner disagrees. The above limitations are not claimed. No where in the claim there is recital or indication of the "a distribution of fat".

Regarding claim 73, the applicant argues on pages 10 and 11 that "Crampton does not disclose producing an image predictive of a person's appearance resulting from following a prescribed regimen", the examiner disagrees. Crampton discloses at **Col 51 lines 63- Col 52 lines 18** where the weight of an individual and stored models of how shape varies with their body

mass index **(a measure of body fat)** and in particular the outline data **obtained from the images** is utilized to define the maximum extent of an individual. Crampton further discloses the direct user input weight data would enable avatar data to be generated which allowed individuals to simulate the effects of the weight change as a result of dieting which meets the limitations of producing an image **(avatar)** to be predictive of the **dieting** (a prescribed regimen) by simulating the effects of the weight change.

Applicant further argues that "Crampton does not disclose adjusting a first image by increasing or decreasing at least one of a representation of an amount of fat or a representation of an amount of muscle independently of the other", the examiner disagrees. Crampton discloses the construction of an avatar from an images taken by the cameras at **Col 49 Lines 29-38**. Crampton further discloses generating an avatar based on the weight and the calculated body mass index (fat representation) based on the image data at **Col 49 lines 39-44**. Crampton further discloses the reference geometry calculated from the reference model avatar based on the height and the BMI such that for overweight individuals the vertices corresponding to the points around the stomach move outward relative to one another as body mass index increases **(a measure of body fat)** at **Col 49 lines 47-57** meeting the limitations of image being adjusted with the increasing in the amount of BMI (a measure of fat). Therefore, claims 51 and 73 are not allowable over Crampton.

Applicant further argues with respect to 35 U.S C 103 rejection of Posa and Crampton on page 10 that the "applicant's body shape designation deals with representation of fat", the examiner disagrees. The above limitations on which the applicant is arguing are not recited in the claim. Posa also discloses the "body shape designation" at paras **0017,0020,0024 and 0026** based on which the future images are generated. Crampton discloses the above limitation as explained above. Therefore Posa and Crampton combined together disclose the limitations of claim 51.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 51-73 are rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. While the claims recite a series of steps or acts to be performed, a statutory "process" under 35 U.S.C. 101 must (1) be tied to another statutory category (such as a particular apparatus), or (2) transform underlying subject matter (such as an article or material) to a different state or thing (Reference the May 15, 2008 memorandum issued by Deputy Commissioner for Patent Examining Policy, John J. Love, titled "Clarification of 'Processes' under 35 U.S.C. 101"). The instant claims involve processing the images representative of the person which involves a real world representation of

an object, the claims however do not satisfy the "transformation test" under the

Federal Circuit. *See Gottschalk v. Benson,* 409 U.S. 63, 67 (1972); *In re Bilski,*

545 F.3d 943,956 (Fed. Cir. 2008). The claims do not show the depiction of the

results and therefore they are rejected. Under the transformation test the last

step in the analysis is the **depiction (display)** of the results. Nowhere in the

claims there is a recital of the depiction of the transformed images. The examiner

recommends amending the claims to show the depiction of the results of the

transformation in light of the specification. The amendments must be in support

with the original disclosure in order to avoid the new matter issues.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 51 and 73 are rejected under 35 U.S.C. 102(e) as being anticipated by

Crampton (US 7184047) hereafter Crampton.

51. Regarding claim 51, Crampton discloses a method **(Fig 51 and 68)** for producing an image predictive of a person's appearance resulting from following a prescribed regimen, said method comprising:

receiving a first data set associated with said person said first data set comprising a body shape designation **(obtaining data representative of a user's external appearance (body shape designation) at Col 55 lines 6-21 and 46-47, lines 16-18 and Col 51 lines 63 through Col 52 lines 18 where the outline data is utilized to define the maximum extent of the individual),**

creating a first image representative **(a reference geometry for an individual of the calculated height and body mass index from the image data captured at Col 49 lines 39-49)** of said person in a pre-regimen **(Col 49 lines 47 and 53 where relative obesity and overweight condition indicate a pre-regimen)** condition by modifying a generic image **(a reference male or female avatar at Col 49 lines 39-55, Col 55 lines 6-21)** based on said first data set **(Col 36 lines 67 through Col 37 lines 25, Col 49 lines 20-55 and Col 51 lines 63 through Col 52 lines 18, Col 55 lines 6-48);**

receiving a second data set **(weight data inputted by the user at Col 52 lines 14-18)** comprising at least one goal desired from said regimen **(effects of weight change as a result or dieting or loose weight at col 52 lines 16-18);** and creating a second image **(a computer model of the avatar being generated based on the simulated effects of weight and outline data at col**

52 lines 1-18) of the representative of said person in a post-regimen condition by modifying said first image based on said second data set **(avatar construction program utilizes the weight and the height data from the captured first image to calculate BMI and a new avatar is calculated based on the height and BMI calculated from the image at Col 49 lines 29-61, Col 51 lines 63 through Col 52 lines 18 and Col 55 lines 6-21)**.

73. Regarding claim 73 see the explanation of claim 51 and Crampton also discloses calculating BMI which is an indication of relative Obesity (Fat) of an individual and the vertices are moved (adjusted) based on the overweight individuals **(Col 49 lines 39-56 and Col 51 lines 67 through Col 52 lines 18)**.

Alternate rejections for the claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 51-53, 55, 57-59, 67, 72-76 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Posa (US 20030108851) hereafter Posa in view of Crampton

(US 7184047) hereafter Crampton as best understood by the examiner.

Regarding Claim 51, Posa discloses a method **(Figs 1 and 2)** for

producing an image predictive of a person's appearance resulting from following

a prescribed regimen, said method comprising:

receiving a first data set associated with said person; said first data set

comprising a body shape designation **(measurements of body parameters**

such as waistline, body volume body weight representative of the body

shape in page 1 Para 0005, the program assists the person to achieve the

desired body shape based on the comparison of the difference in the body

parameter and creating the image representative of the image difference);

receiving a second data set comprising at least one goal desired from

said regimen **(Page 1 Para 0010,0011 and Page 2 Para 0013, 0014 where the**

desired data set is entered by the client or person and the images are

modified accordingly as seen in Fig 2.);

creating a second image representative of said person in a post-regimen

condition by modifying said first image based on said second data set **(Page 2**

Paras 0013 to 0020). Posa discloses that the remote server creates a

stereoscopic representation of the person using the recorded images and

allowing the stereoscopic images to be modified by the modified measurements

at **(Page 2 Para 0017)**, however do not disclose creating a first image representative of said person in a pre-regimen condition by modifying a generic image based on said first data set.

Crampton discloses creating a first image representative **(a reference geometry for an individual of the calculated height and body mass index from the image data captured at Col 49 lines 39-49)** of said person in a pre-regimen **(Col 49 lines 47 and 53 where relative obesity and overweight condition indicate a pre-regimen)** condition by modifying a generic image **(a reference male or female avatar at Col 49 lines 39-55, Col 55 lines 6-21)** based on said first data set **(Col 36 lines 67 through Col 37 lines 25, Col 49 lines 20-55 and Col 51 lines 63 through Col 52 lines 18, Col 55 lines 6-48)**. Crampton discloses a method and program which creates computer models of individuals in different poses which is an improvement from the single pose generation which does not allow studying the internal structure **(Col 1 lines 21-59)**. Crampton and Posa are from the same field of endeavor and are analogous art, therefore it would have been obvious for one of ordinary skill in the art at the time the invention was made to have used the teachings of Crampton in the method and apparatus of Posa for the above reasons.

Regarding Claim 52, Posa and Crampton discloses the method of claim 51. Posa disclose the body shape designations **(measurements of body parameters such as waistline, body volume body weight representative of**

the body shape in page 1 Para 0005) and is silent and however does not

expressly disclose wherein said body shape designation is selected from pear-

shaped (top portion slim and middle part wide), apple-shaped (middle part of

the body wide), and straight-shaped (skinny all the way like a skeleton) of the

individuals,

Crampton disclose said body shape designation is selected from

(transformation of stored avatar geometry to resemble calculated geometry

of the user based on selection of different generic avatars stored

representing adults, children, men and women or various shapes which

forms the basis of generating the avatars at Col 55 lines 6-21 and 46-47)

and will be with in one of ordinary skill to select from the varieties such as pear-

shaped, apple-shaped, and straight-shaped as claimed. The various shapes as

disclosed by Crampton above would also include such shapes as claimed even

though not expressly recited.

Regarding Claim 53, Posa and Crampton discloses the method of claim

51. Posa discloses further comprising calculating an ideal weight and an

estimated body fat percentage for said person at (Page1 Para 0005).

Regarding Claim 55, Posa and Crampton discloses the method of claim

51. Posa further disclose wherein said creating a second image comprises

calculation of an age factor (Page 2 Para 0026 where the data collected is

used in creating the image). Crampton also discloses the age factor in claim 88.

Regarding Claim 57, Posa and Crampton disclose the method of claim 51. Posa further disclose wherein said at least one goal is selected from the group consisting of weight loss, muscle gain **(body building)**, and a combination of weight loss and muscle gain at **(Page 1 Para 0001 and Para 0005)**. Crampton also discloses the dieting and weight change and obesity in **(Col 49 lines 39-55 and Col 52 lines 1-18)**.

Regarding Claim 58, Posa and Crampton disclose the method of claim 51. Posa further disclose wherein said regimen comprises at least one of the following: resistance exercise, cardiovascular exercise, nutrition planning, dietary supplement intake, and personal training at **(Page 1 Para 0010)**. Crampton also discloses the dieting and weight change and obesity in **(Col 49 lines 39-55 and Col 52 lines 1-18)**.

Regarding Claim 59, Posa and Crampton disclose the method of claim 51. Posa further disclose wherein said at least one goal comprises muscle gain and wherein said muscle gain (body building at Para 0001) is calculated based on at least one of the following factors: a base muscle gain factor; a supplement boost factor; a resistance compliance factor; an age factor; a nutrition factor

(calorie intake); and a gender factor at **(Paras 0010, 0011, 0026 and 0029)** where age diet and gender are used for creating the images with respect to the muscle gain or **(body building)** program.

Regarding Claim 67, Posa and Crampton disclose the method of claim 53. Posa further disclose comprising recalculating said body fat percentage to account for fat loss or muscle gain resulting from said regimen in **(Para 0005)** where the difference is determined between before and after images. Posa discloses the difference and this is calculated based on the calculation and recalculation in the before and the after images. Posa further discloses determining the progress level of the person at intervals during the program in **para 0005** which is recalculating the body fat percentage.

Regarding Claim 72, Posa and Crampton disclose the method of claim 51. Posa disclose further comprising: adjusting said first image by independently adjusting **(providing a program to achieve a desired body shape (body building),exercise program will adjust the muscle and body fat in Para 0005 and 0001)** at least one of a muscle layer and a fat layer. Posa disclose taking the difference by comparing with the initial body parameter to calculate the progress. Crampton discloses modifying points (head offset values) on the generic avatar model based on the image data obtained from the camera at col 37 lines 1-25 and also discloses texture rendering program Col 49 lines 56-67 corresponding

to the legs and hands which have muscles.

Regarding Claim 73, See the explanation of claim 51 and Crampton also discloses calculating BMI which is an indication of relative Obesity (Fat) of an individual and the vertices are moved (adjusted) based on the overweight individuals **(Col 49 lines 39-56 and Col 51 lines 67 through Col 52 lines 18)**.

Regarding Claim 74, Posa and Crampton disclose the method of claim 73. Crampton disclose further wherein said adjusting (editing) is performed by moving a slider bar in a graphical user interface **(Figs 10-14 where the arrows with the slider bars are used to edit the images)**.

Regarding claim 75, Posa discloses a method **(Figs 1 and 2)** a method for producing an image predictive of a person's appearance resulting from following a prescribed regimen, said method comprising:

receiving a first data set associated with said person; said first data set comprising a body shape designation **(measurements of body parameters such as waistline, body volume body weight representative of the body shape in page 1 Para 0005, the program assists the person to achieve the desired body shape based on the comparison of the difference in the body parameter and creating the image representative of the image difference**

which shows that the difference is only possible if an initial body shape is
designated to achieve the desired body shape);

receiving a second data set comprising at least one goal desired from said
regimen **(Page 1 Para 0010,0011 and Page 2 Para 0013, 0014 where the
desired data set is entered by the client or person and the images are
modified accordingly as seen in Fig 2.)**; and creating a second image
representative of said person as said person is predicted to appear after
following said regimen by modifying said first image based on at least one
feature of said regimen and said second data set **(Page 2 Paras 0013 to 0020
where the second images are generated by modifying the stereoscopic
images and generating the predicted stereoscopic representations on the
basis of weight control programs or projected body shapes based on the
program as disclosed in para 0017)**; said method being performed using a
computer **(para 0010 where the computer 110 is disclosed)**. Posa discloses
that the remote server creates a stereoscopic representation of the person using
the recorded images and allowing the stereoscopic images to be modified by the
modified measurements at **(Page 2 Para 0017)**, however do not disclose
creating a first image representative of said person prior to following said
regimen by modifying a generic image based on said first data set.

Crampton discloses creating a first image representative **(a reference
geometry for an individual of the calculated height and body mass index
from the image data captured at Col 49 lines 39-49)** of said person prior to

following said regimen **(Col 49 lines 47 and 53 where relative obesity and overweight condition indicate a prior condition of following said regimen)** condition by modifying a generic image **(a reference male or female avatar at Col 49 lines 39-55, Col 55 lines 6-21)** based on said first data set **(Col 36 lines 67 through Col 37 lines 25, Col 49 lines 20-55 and Col 51 lines 63 through Col 52 lines 18, Col 55 lines 6-48)**. Crampton discloses a method and program which creates computer models of individuals in different poses which is an improvement from the single pose generation which does not allow studying the internal structure **(Col 1 lines 21-59)**. Crampton and Posa are from the same field of endeavor and are analogous art, therefore it would have been obvious for one of ordinary skill in the art at the time the invention was made to have used the teachings of Crampton in the method and apparatus of Posa for the above reasons.

Regarding claim 76, Posa discloses **(Figs 1 and 2)** a method for producing an image predictive of a person's appearance resulting from following a prescribed regimen, said method comprising:

receiving a first data set associated with said person; **(measurements of body parameters such as waistline, body volume body weight representative of the body shape in page 1 Para 0005, the program assists the person to achieve the desired body shape based on the comparison of the difference in the body parameter and creating the image representative**

of the image difference which shows that the difference is only possible if an initial body shape is designated to achieve the desired body shape); receiving a second data set comprising at least one goal desired from said regimen; and creating a second image representative of said person as said person is predicted to appear after following said regimen by modifying said first image based on at least one feature of said regimen and said second data set; **(Page 2 Paras 0013 to 0020 where the second images are generated by modifying the stereoscopic images and generating the predicted stereoscopic representations on the basis of weight control programs or projected body shapes based on the program as disclosed in para 0017);** said method being performed using a computer **(para 0010 where the computer 110 is disclosed)**. Posa discloses that the remote server creates a stereoscopic representation of the person using the recorded images and allowing the stereoscopic images to be modified by the modified measurements at **(Page 2 Para 0017)**, however do not disclose creating a first image representative of said person prior to following said regimen by modifying a generic image based on said first data set; said first image being associated with a computerized model comprising a fat layer and a muscle layer; adjusting said first image by increasing or decreasing at least one of a representation of said fat layer and a representation of said muscle layer independently of the other.

Crampton discloses creating a first image representative **(a reference geometry for an individual of the calculated height and body mass index**

from the image data captured at Col 49 lines 39-49) of said person prior to following said regimen **(Col 49 lines 47 and 53 where relative obesity and overweight condition indicate a prior condition of following said regimen)** condition by modifying a generic image **(a reference male or female avatar at Col 49 lines 39-55, Col 55 lines 6-21)** based on said first data set **(Col 36 lines 67 through Col 37 lines 25, Col 49 lines 20-55 and Col 51 lines 63 through Col 52 lines 18, Col 55 lines 6-48)**; said first image being associated with a computerized model comprising a fat layer and a muscle layer **(the reference male or female avatar model is the computerized representation which has a frame model matrix corresponding to the BMI and as such the stomach moves outward relative to the body mass index (a measure of fat) and the height of the trunk legs and arms which indicates having muscle layer at Col 49 Lines 47-62)** and is associated with the first image at **(Col 49 lines 34-38 where the avatar construction program uses the image captured by the camera, Col 52 lines 1-15)**; adjusting said first image by increasing **at least one of** a representation of said fat layer **(as body mass which is a representation of fat increases the stomach moves outward in the model)**. Crampton discloses a method and program which creates computer models of individuals in different poses which is an improvement from the single pose generation which does not allow studying the internal structure **(Col 1 lines 21-59)**. Crampton and Posa are from the same field of endeavor and are analogous art, therefore it would have been obvious for one of ordinary skill in the art at the time the

invention was made to have used the teachings of Crampton in the method and apparatus of Posa for the above reasons.

Claims 68-71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Posa in view of Crampton and in further view of Abrams et al. (US 5673691) hereafter Abrams.

Regarding Claim 68, Posa and Crampton disclose the method of claim 51. Posa further disclose that his invention is an improvement in health related monitoring in **para 0004**. Posa and Crampton however do not expressly recite further comprising the step of estimating at least one health risk for said person in said pre-regimen condition.

Abrams disclose a method and apparatus that monitor weight loss program that reduce and control diabetes, stress, hypertension and other health conditions at **(Col 5 Lines 40-43)** which would comprise estimating at least one health risk for said person in said pre-regimen condition. Posa, Crampton and Abrams are combinable because they are from the same field of endeavor and are analogous art. The suggestion/motivation would be precision, flexibility and immediacy in weight monitoring and caloric adjustment by dynamically adjusting the weight and the behavior at **(Col 5 Lines 19-29)** as disclosed by Abrams. Therefore it would have been obvious for one of ordinary skill in the art at the time the invention was made to have used the teachings of Abrams of provide

appropriate warnings and adjustments in the method and apparatus of Posa and
Crampton for the above reasons.

Regarding Claim 69, see the explanation of Claim 68.

Regarding Claim 70, see the explanation of Claim 68.

Regarding Claim 71, see the explanation of Claim 68.

Allowable Subject Matter

Claims 54, 56, 60-66 are objected to as being dependent upon a rejected base
claim, but would be allowable if rewritten in independent form including all of the
limitations of the base claim and any intervening claims.

Other cited prior art

The other cited prior art relevant to the applicants disclosure are (US 4602280)
(US 7328119), (US 20030065278), (US 6972775), (US 7187790) and (US
5951300).

Conclusion

Any inquiry concerning this communication or earlier communications from the
examiner should be directed to JAYESH A. PATEL whose telephone number is
(571)270-1227. The examiner can normally be reached on M-F 7.00am to 4.30
pm (5-4-9). If attempts to reach the examiner by telephone are unsuccessful, the

examiner's supervisor, Brian Werner can be reached on 571-272-7401. The fax

phone number for the organization where this application or proceeding is

assigned is 571-273-8300.

Information regarding the status of an application may be obtained from

the Patent Application Information Retrieval (PAIR) system. Status information

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Representative or access to the automated information system, call 800-786-

9199 (IN USA OR CANADA) or 571-272-1000.

/Jayesh A Patel/
Examiner, Art Unit 2624

/Brian P. Werner/
Supervisory Patent Examiner, Art Unit 2624